

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 12, 2010 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pozniak et al. (US 6,045,543) in view of Fidler (US 6,243,543).

As to claim 1, Pozniak et al. (hereinafter referred to as "Pozniak") discloses a disposable absorbent article (8) comprising (a) a chassis, a garment-facing surface and a body-facing surface, the chassis adapted to extend from a back waist area of a wearer to a front waist area of a wearer with the body-facing surface overlying the crotch area of the wearer, the chassis including a first waist region, a second waist

Art Unit: 3761

region and a crotch region (figure 1); (b) a pair of side panels extending substantially laterally outward from respective edge portions of the second waist region of the article (figure 5), the side panels each carrying a securement element for engagement with the garment-facing surface at the first waist region of the article for securing the article in a wearing position on the wearer (figure 5 – elements 36A and 36B); (c) a predetermined ornamental visual image consisting of a first, second and third incomplete image element each being different and each having a shape, wherein the first incomplete image element is joined to one of the pair of side panels and the second incomplete image element is joined to another of the pair of side panels, and the third incomplete image element is disposed on the first waist region of the article wherein the predetermined ornamental visual element is visible and complete when the side panels are secured to the first waist region and the first, second and third incomplete image elements together complete the predetermined ornamental visual image as set forth in col. 3, lines 8 – 19 and figures 2 – 5.

The difference between Pozniak and claim 1 is the provision that the predetermined ornamental visual image is a cartoon character.

Fidler teaches a closing mechanism that includes an adjustable image (col. 6, lines 50 – 58) that includes the image of a cartoon character as set forth in col. 8, lines 48 – 51.

It would have been obvious to one of ordinary skill in the art to substitute the visual image of Pozniak with the image taught by Fidler because Pozniak recognizes

the use of various images (col. 10, lines 48 – 50) and the substitution of one type of visual element for another is within the level of ordinary skill in the art.

With reference to claim 2, Pozniak discloses an article wherein the securement elements include fastener tabs that have a predetermined ornamental shape as set forth in figure 5.

### ***Response to Arguments***

Applicant's arguments filed June 11, 2009 have been fully considered but they are not persuasive.

The applicant argues that the references do not include incomplete image elements. The examiner disagrees. As set forth in the rejection of claim 1, the examiner refers to col. 3, lines 8 – 19 and figures 2 – 5 of Pozniak which show the outer portions each containing first and second incomplete images wherein the middle portion may be considered as a third incomplete image. When the article is fastened, the three incomplete images may be considered to form a complete image element.

It would have been obvious to one of ordinary skill in the art to provide a cartoon character as the image as taught by Fidler because Pozniak recognizes the use of various images (col. 10, lines 48 – 50) and the substitution of one type of visual element for another is within the level of ordinary skill in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/

Primary Examiner, Art Unit 3761